



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQ18/00175

**Ms Verity Pane**

By email: [foi+request-4924-64e4e2af@righttoknow.org.au](mailto:foi+request-4924-64e4e2af@righttoknow.org.au)

## Your Freedom of Information request – Decision on access

Dear Ms Pane,

I refer to your request for access to documents under the *Freedom of Information Act 1982* (Cth) (the FOI Act), received by the Office of the Australian Information Commissioner (OAIC) on 1 November 2018. You requested:

copy of any document, including text messages or any other recognised form of documents by the Act, held by the OAIC (as defined by the Act), that relate or refer to DVA FOI [reference no]

On 20 November 2018 an officer of the OAIC sought clarification as to the scope of your FOI request.

On 21 November 2018 you responded and advised that:

I \*exclude\* from scope any emails sent by me, unless they are part of a chain of the OAIC's communications. My email address is to be redacted.

References to provisions in this decision record are to those in the FOI Act, unless otherwise stated.

## Decision

I am an officer authorised under s 23(1) to make decisions in relation to FOI requests.

I have identified 31 documents falling within the scope of your request. I have decided to grant you access to 22 documents in full, redacting only material that you have excluded from your request as irrelevant, being out of scope. I have decided to grant you access to nine documents in part, with exempt material deleted under ss 47E(d) and 47F.

A schedule describing each document and the access decision I have made is at Appendix A to this decision.

## Reason for decision

### Material taken into account

In making my decision, I have had regard to the following:

- your freedom of information request of 1 November 2018 and your email of 21 November 2018
- the documents at issue
- the FOI Act, in particular ss 11A(5), 22, 47E(d) and 47F
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (the FOI Guidelines), particularly at [3.95]-[3.100], [6.4]-[6.28], [6.95]-[6.108], [6.120]-[6.123], [6.124]-[6.157] and [6.161]-[6.172]
- submissions from the Department of Veterans' Affairs (Department)
- information obtained from an individual departmental officer.

### Personal privacy conditional exemption (s 47F)

I have decided that documents 1, 2, 6, 8, 12 and 17 are conditionally exempt in part under s 47F. The relevant material is the surname of an officer of the Department.

Section 47F conditionally exempts documents where disclosure would involve the unreasonable disclosure of personal information of any person.

'Personal information' in the FOI Act has the same meaning as in the *Privacy Act 1988* (Cth) (Privacy Act). Under s 6 of the Privacy Act, 'personal information' means:

Information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) whether the information or opinion is true or not; and
- b) whether the information or opinion is recorded in a material form or not

I am satisfied that the surname of the departmental officer is personal information.

In determining whether disclosure of personal information would be unreasonable, s 47F(2) requires me to have regard to the following matters:

- the extent to which the information is well known

- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- availability of the information from publically accessible sources
- any other matters I consider relevant.

Where a public servant's personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose the information, unless special circumstances exist (FOI Guidelines at [6.153]).

Documents 1, 2, 6, 8, 12 and 17 contain the full name of a public servant, appearing in the context of the documents as part of their usual duties and responsibilities.

Having conducted Internet searches, I am satisfied that the information is not well known, the individual is not known to be associated with the matters in the document and the information is not otherwise publicly available.

The Department has provided submissions stating that the individual has identified special circumstances that would make it unreasonable to disclose the surname in documents 1, 2, 6, 8, 12 and 17. I have also considered information obtained confidentially from the individual setting out details of the special circumstances.

Pursuant to s 26(2), this decision record is not required to contain reference to any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

I have considered the submissions provided by the Department and the individual and I am satisfied that special circumstances exist in this case that mean that disclosure of this officer's surname would be unreasonable. The surname of the departmental officer is conditionally exempt under s 47F.

### Public interest test (s 11A(5))

Under s 11A(5) access must be given to a conditionally exempt document unless in the circumstances giving access would, on balance, be contrary to the public interest. In determining the public interest, I am to have regard to the factors favouring access set out in s 11B(3), where relevant.

In relation to the personal information that is conditionally exempt under s 47F, I do not consider that any of the factors would favour disclosure. Rather, I consider that there is a significant factor that weighs in favour of non-disclosure. Namely, that release of the information could reasonably be expected to prejudice the protection of an individual's right to privacy (FOI Guidelines at [6.22(a)]).

On this basis, I have decided to refuse access to the personal information.



## Documents affecting certain operations of agencies (s 47E)

I have decided that part of document 31 is conditionally exempt from disclosure under s 47E(d). Document 31 contains the network address for the OAIC's IT system. I have found this material is conditionally exempt.

For a document to be conditionally exempt under s 47E(d), it needs to be shown that disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

The FOI Guidelines at [6.101] and [6.103] provide:

For the grounds in ss 47E(a)–(d) to apply, the predicted effect needs to be reasonably expected to occur. The term 'could reasonably be expected' is explained in greater detail in Part 5. There must be more than merely an assumption or allegation that damage may occur if the document were to be released.

...

An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied upon, the relevant particulars and reasons should form part of the decision maker's statement of reasons, if they can be included without disclosing exempt material (s 26, see Part 3).

The FOI Guidelines explain that 'substantial adverse effect' means that the expected effect needs to be both 'substantial' and 'adverse'. The term 'substantial adverse effect' broadly means 'an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person'.

In the Administrative Appeals Tribunal (AAT) case of *Diamond and Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority* [2014] AATA 707, Deputy President Forgie discussed that for a claim under s 47E(d) to succeed, the substantial adverse effect that would, or could reasonably be expected to, occur must be on the 'proper and efficient conduct of the operations of an agency'. Deputy President Forgie explains that the 'ordinary meanings of the word "operation" in this context' includes 'an act, method or process of working or operating.'

In the Information Commissioner review (IC review) case of *'AW' and Australian Taxation Office (Freedom of information)* [2014] AICmr 1 ('AW'), the then Freedom of Information Commissioner considered the decision by the Australian Taxation Office (ATO) to exempt user IDs under s 47E(d). The user IDs are used by ATO staff to access the ATO's IT system. The Commissioner found that disclosing the user IDs 'would have an adverse effect on the security of the ATO's IT systems, and could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the ATO'.

In deciding whether disclosure of the network address of the OAIC's IT system, would or could reasonably be expected to, have a substantial adverse effect on the operation of the OAIC, I have had regard to the OAIC's functions and responsibilities.

The OAIC collects and stores a range of personal and financial information about members of the public. The network address contains information about the OAIC's IT system (including the network location and storage of information). I consider that disclosure of this information could compromise the safety and security of the storage of the information held by the OAIC. The impact of any compromise to the safety and security of the OAIC's information systems would result in a serious adverse impact on the functions and responsibilities of the OAIC.

I consider that the disclosure of the network address of the OAIC's computer system could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the OAIC's operations.

I have decided that the network address of the OAIC's IT system in document 31 is conditionally exempt from disclosure under s 47E(d).

#### Public interest test (s 11A(5))

In relation to the information that is conditionally exempt under s 47E(d), I have identified one public interest factor that would favour disclosure - that disclosure would promote the objects of the FOI Act. However, I do not consider that this would do so to any great extent.

Against this factor, I consider that disclosing the network address for the OAIC's IT system could:

- reasonably be expected to have an adverse effect on the safety and security of the OAIC's IT system
- reasonably be expected to prejudice the privacy rights of members of the public. If the OAIC's network address is disclosed this may expose the personal information of members of the public who make privacy complaints to the OAIC to unauthorised access, modification and disclosure
- could reasonably be expected to harm the interests of an individual or group of individuals.

On balance, I consider that the factors against disclosure outweigh the factor in favour of disclosure. I have therefore decided that it would be contrary to the public interest to give you access to the information that I have found to be conditionally exempt under s 47E(d).

### **Irrelevant material (s 22)**

Section 22 provides that irrelevant information can be deleted from a document if it is reasonably practicable to prepare a copy of the document modified by deletions, and the modified copy would not disclose the irrelevant material.

I have considered your email of 21 November 2018 and I have excluded from scope emails sent by you, unless they are part of a chain of the OAIC's communications. I have also deleted your email address as irrelevant to your request.

Yours sincerely,



**Cate Cloudsdale**  
Senior Lawyer

3 December 2018

## **If you disagree with my decision**

### **Internal review**

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

### **Further Review**

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, it is likely that the Information Commissioner will decide (under s 54W(b) of the FOI Act) not to undertake an IC review on the basis that it is desirable that my decision be considered by the AAT.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for internal review or IC review can be submitted to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Alternatively, you can submit your application by email to [foi@oaic.gov.au](mailto:foi@oaic.gov.au), or by fax on 02 9284 9666.



## Accessing your information

If you would like access to the information that we hold about you, please contact [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). More information is available on the [Access our information](#) page on our website.

## Disclosure log

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 days of release, except if they contain personal or business information that it would be unreasonable to publish.

The documents I have decided to release to you do not contain business or personal information that would be unreasonable to publish. As a result, the documents will be published on our [disclosure log](#) shortly after being released to you.





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## Appendix 1: Schedule of documents – Freedom of Information request no FOIREQ18/00175

Document No.	Date	Description	Decision on Access	Exemption
1	30 August 2018	Email	Release in part	47F
2	30 August 2018	Attachment to email	Release with irrelevant material redacted under s 22	47F
3	15 August 2018	Attachment to email	Release in full	
4	15 August 2018	Attachment to email	Release with irrelevant material redacted under s 22	
5	24 August 2018	Attachment to email	Release with irrelevant material redacted under s 22	
6	24 August 2018	Attachment to email	Release in part	47F
7	31 August 2018	Email	Release with irrelevant material redacted under s 22	

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8	31 August 2018	Email	Release in part	47F
9	15 August 2018	Attachment to email	Release in full	
10	15 August 2018	Attachment to email	Release with irrelevant material redacted under s 22	
11	24 August 2018	Attachment to email	Release with irrelevant material redacted under s 22	
12	24 August 2018	Attachment to email	Release in part	47F
13	30 August 2018	Attachment to email	Release with irrelevant material redacted under s 22	
14	31 August 2018	Email	Release with irrelevant material redacted under s 22	
15	31 August 2018	Email	Release with irrelevant material redacted under s 22	
16	31 August 2018	Email	Release in full	
17	7 September 2018	Draft	Release in part	47F
18	7 September 2018	Draft	Release with irrelevant material redacted under s 22	

19	7 September 2018	Email	Release with irrelevant material redacted under s 22	
20	7 September 2018	Attachment to email	Release with irrelevant material redacted under s 22	
21	7 September 2018	Email	Release in part	47F
22	7 September 2018	Attachment to email	Release in part	47F
23	12 September 2018	Email	Release with irrelevant material redacted under s 22	
24	7 September 2018	Attachment to email	Release in full	
25	12 September 2018	Email	Release with irrelevant material redacted under s 22	
26	14 September 2018	Draft	Release in full	
27	14 September 2018	Email	Release in full	
28	14 September 2018	Draft	Release with irrelevant material redacted under s 22	
29	18 September 2018	Email	Release in full	

30	1 November 2018	Draft	Release with irrelevant material redacted under s 22	
31	15 November 2018	Resolve report	Release in part	47E(d)